

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

LYCURGAN, INC., a California  
corporation, d/b/a Ares Armor,

Plaintiff-Appellant,

vs.

TODD JONES, in his official capacity as  
Director of the Bureau of Alcohol,  
Tobacco, Firearms and Explosives,

Defendant-Appellee.

Case No. 16-55341

D.C. Case No. 3:14-cv-01679-JLS-BGS  
U.S. District Court for Southern  
California, San Diego

**APPELLANT'S MOTION FOR EXTENSION OF TIME  
TO FILE OPENING BRIEF**

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Attorneys for Appellant,  
Lycurgan, Inc.

Plaintiff-Appellant, Lycurgan, Inc., pursuant to 9th Cir.R. 31-2.2(b) and based upon the companion Declaration of Scott A. McMillan, hereby moves this Court for a forty-six (46) day extension of time within which to file Appellant's Opening Brief and excerpts on appeal with this Court.

The basis for the request is an overwhelming schedule as summarized in the attached Declaration of Scott McMillan. In short, Mr. McMillan's time has been consumed with attending mediations, taking depositions, filing and opposing motions for summary judgment in addition to handling the day to day matters of his firm. In addition, Appellant's counsel has trials beginning on August 5, 2016 and August 17, 2016 in unrelated cases and discovery is not yet complete.

The Opening brief on appeal in this case was originally due on June 14, 2016 as a result of the Scheduling Order filed on March 7, 2016. [Doc. 59.] On June 8, 2016, Lycurgan received one "streamlined" request for extension of 30 days, which extended the due date to July 14, 2016.

Appellant respectfully requests an additional extension of forty-six days for its opening brief and excerpts on appeal.

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Undersigned notified opposing counsel, Daniel Butcher, Assistant United States Attorney for the Southern District of California, who does not oppose the requested extension.

Respectfully submitted,

THE McMILLAN LAW FIRM, APC

/s/ Scott A. McMillan

Dated: July 7, 2016

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Scott A. McMillan  
Marilyn S. Phelps  
Attorneys for Appellant  
Lycurgan, Inc.

## **DECLARATION OF SCOTT A. MCMILLAN**

I, Scott A. McMillan, declare:

1. I am an attorney at law duly admitted to practice before this Court, and am the principal of The McMillan Law Firm, APC. I am a Certified Appellate Specialist (California State Bar Board of Legal Specialization), appellate counsel of record for Appellant, Lycurgan, Inc.

2. Current Due Date and Prior Extensions: Appellant's Opening Brief is currently due to this Court on July 14, 2016. The brief was originally due on June 14, 2016. Lycurgan received one "streamlined" request for extension of 30 days, which extended the due date to July 14, 2016.

3. Pursuant to 9th Cir. R. 31-2.2(b), I respectfully request that the time for filing and serving Lycurgan's Opening Brief with companion Excerpts of Record be extended by forty-six days up to and including August 29, 2016.

4. Diligence, Substantial need, and Good Cause: At present, I am unable to complete the brief by the deadline due my recent schedule in the past month and beyond. Specifically:

A. On June 9, 2016, I flew to Florida with my client for a mandatory settlement conference in the matter *Ares Defense Systems vs. Karras, et al.* June 10, 2016 was a full day of mediation. I returned to California on the evening of June 11, 2016.

B. On June 15, I attended another mediation in the matter *Balaz vs. First*

*American Title Co. et al.*, which consumed the entire day and required that I spend the two days prior completing the mediation brief. Also on June 15, 2016, I had two small appellate filings due in *Ochoa vs. Setton Pistachio et al.* and an expert exchange in the matter *Kindt v. Trango*.

C. On June 16, 2016, I had two motion hearings in *Kindt v. Trango*.

D. On June 18, 2016, early in the morning, I flew to the East Coast with my family. I spent the days prior to this trip ensuring that everything due within the next week was complete and that my staff knew their obligations while I was absent. I did not return to California until June 25, 2016.

E. On June 27, 2016 I had to complete and file a reply in support of a Motion for Summary Adjudication due at 3 p.m. This was heard on June 30, 2016.

F. On June 28-29, 2016, I drafted and filed a Motion to Compel Written Discovery in *Kelegian vs. Anders*.

G. The week leading up to July 5, 2016, was dedicated in part to completing a Motion for Summary Adjudication of Issue in the adversarial bankruptcy case *Ackerman v. Essary*. This time was also used to prepare a Ninth Circuit opening brief, originally set for submission on July 7, 2016, for which an initial streamlined extension was approved on July 6, 2016, moving the deadline to August 5, 2016. Further, on July 5, 2016, I deposed a material witness in *Balaz vs. First American Title Ins. Co.* which consumed the entire day.

H. On July 8, 2016, I will be deposing the other material witness in *Balaz v. First Amercian Title Ins. Co.* This will likely also take a full day.

I. On Monday, June 11, 2016, I have due a Statement of Issues and a Designation of Record on Appeal in the adversary case for *In re Roth*, ex parte papers for the June 12, 2016 hearing in *Jarecki v. Zitter*, an opposition to a Motion for Relief from Waiver in *Kelegian v. Anders*, and an opposition to two separate motions for fees in bankruptcy court matter *In re Professional Satellite and Communication, LLC*.

J. On June 12 I have an ex parte in *Jarecki v. Zitter* and on June 13, 2016 an ex parte in *Kindt v. Trango*. Discovery responses in *Kindt v. Trango* is also due on June 13, 2016.

K. On June 14, 2016, I will be preparing a Request for Entry of Default in the matter *The McMillan Law Firm v. Copenbarger, et al.*

L. I have trials scheduled to begin on August 5, 2016 in *Kelegian vs. Anders* and on August 17, 2016 in *Robert James Co. v. Wawer*. I will spend much of the next month preparing for these trials.

5. Good Faith and Lack of Prejudice:

This Motion is made in good faith for the reasons stated here and not for any other purpose. Furthermore, I know of no prejudice that will result to any party from grant of this Motion. However, significant prejudice may result to Lycurgan if this Motion is denied because I will not have sufficient time to thoroughly complete my analysis for

Appellant's Opening Brief and the excerpts of record.

6. Position of Appellee, Bureau of Alcohol, Tobacco, Firearms: On July 6, 2016, I contacted Daniel Butcher by email. He responded, indicated that he would not oppose this motion for an extension.

7. No Default By Court Reporter: Pursuant to 9th Cir. R. 31- 2.2(b)(7), I further declare that no court reporter is in default with regard to any designated transcripts in this appeal.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 7, 2016, at the City of La Mesa, County of San Diego, California.

/s/ Scott A. McMillan

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Scott A. McMillan

United States Court of Appeals for the Ninth Circuit  
Appellate Court Case No.: 14-56550

**CERTIFICATE OF SERVICE**

**When All Case Participants are Registered for the Appellate CM/ECF System**

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 4670 Nebo Drive, Suite 200, La Mesa, CA 91941.

I, the undersigned, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 8, 2016:

1) **APPELLANT’S MOTION FOR EXTENSION OF TIME TO FILE  
OPENING BRIEF**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 8, 2016

/s/ Marilyn S. Phelps

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Marilyn S. Phelps